UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

COOK INLET TUG & BARGE, INC. Employer

and

INLANDBOATMEN'S UNION OF THE PACIFIC

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises a substantial issue solely with respect to whether the captains are statutory supervisors based on their authority to assign and direct. In all other respects, the request for review is denied.¹

MARK GASTON PEARCE, CHAIRMAN

Case 19-RC-106498

PHILIP A. MISCIMARRA, MEMBER

NANCY SCHIFFER, MEMBER

WENDER,

Dated, Washington, D.C., January 23, 2014.

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¹ We reject the Employer's contention that the hearing officer violated the Administrative Procedure Act, the Board's Rule and Regulations, and the ABA's Model Code of Judicial Conduct by inviting the Petitioner's legal team to view union memorabilia after the close of the hearing, as the Employer failed to timely raise this issue to the Regional Director. See Board's Rules and Regulations Sec. 102.67(d). Moreover, the Administrative Procedure Act does not apply to representation hearings, see <u>Bendix Corp.</u>, 150 NLRB 718, 718 fn. 1 (1964); Sec. 102.126 of the Board's Rules and Regulations does not apply to hearing officers, see Board's Rules and Regulations Sec. 102.128(a); and the Board has not adopted and applied the Model Code of Judicial Conduct to hearing officers.

Regarding the Employer's contention that the hearing officer's conduct exhibited bias that prejudiced the Employer, there is no allegation that the hearing officer failed to properly fulfill his role of guiding, directing, and controlling the presentation of evidence at the hearing. Further, the hearing officer made no recommendation to the Regional Director as to the decision in this case.

Member Miscimarra joins his colleagues in granting review regarding whether the captains possess the authority to assign and direct. Additionally, he would grant review regarding whether the captains possess the authority to hire, discharge, promote, discipline, and adjust grievances within the meaning of Sec. 2(11) of the Act.